

This record is a partial extract of the original cable. The full text of the original cable is not available.

C O N F I D E N T I A L SECTION 01 OF 02 HARARE 002353

SIPDIS

NSC FOR SENIOR AFRICA DIRECTOR JFRAZER

E.O. 12958: DECL: 12/03/2013

TAGS: [ECON](#) [EAGR](#) [PGOV](#) [Z1](#)

SUBJECT: AMENDMENTS TO LAND ACT DUCK THE REAL ISSUES

Classified By: Laboff KRBel for reasons 1.5 (b) and (d).

1. (U) Summary: Recently announced amendments to Zimbabwe's Land Acquisition Act do little except close several loopholes through which commercial farmers based legal challenges to compulsory acquisition of their land. Through a blend of easing the procedural constraints on the GOZ and making these amendments retroactive (to May 2000), the amendments underscore the GOZ's de facto ability to do whatever it likes, including removal of procedural or legal impediments. Nothing contained in the amendments deals with the real issues surrounding land reform: returning the land to agricultural productivity, respecting the rule of law, or addressing the thorny issue of sanctity of title. Given the fact that most commercial farmers have already been dispossessed of their land, the very utility of an amended Act at this time is questionable. End summary.

The Specifics

2. (U) In a nutshell, the amendments make the GOZ's seizure of land easier by:

-- removing the GOZ's burden of "personal service in writing" of intent to seize land on the landowner and any other holder of a registered real right (e.g., mortgage holders or water right holders), and substituting publication of such intent in the GOZ gazette and in "a newspaper circulating in the area in which the land to be acquired is situated...";

-- repealing Sections 6A and 6B of the original Act, under which farmers had previously offered either partition of large farms or substitution of alternate farms -- despite possible Administrative Court confirmation of existing offers;

-- removing landowners' legal challenges from the High Court's jurisdiction (where many landowners had obtained interim relief) and lodging original jurisdiction with the Administrative Court;

-- repealing the Hippo Valley Agreement Act, which governed development of the irrigated sugar lands in Chiredzi: this Act previously stated that any land sold to planters under that agreement could be repurchased by the GOZ "if... required... for public use by the Government," with the proviso that the GOZ must pay compensation "mutually agreed upon," or otherwise determined by valuation, for the repossessed land;

-- emasculating the previously-enumerated criteria listed in the original Land Reform Programme (which exempted large-scale plantations growing tea, coffee, timber, citrus, or sugar cane; agro-industrial farms involved in poultry, beef, dairy, or seed-crop production; export processing zones (EPZs); properties operating under a Zimbabwe Investment Centre (ZIC) certificate; approved conservancies; or the sole property of the owner), and declaring that these criteria were henceforth not binding upon the GOZ and no legal basis for a landowner's objection;

-- broadening the scope of the process by declaring that the original eleven million seized hectares was "only .. the minimum" required for resettlement, thus opening the way for the inevitable peri-urban land grab foreshadowed in the Utete report.

Comment

3. (C) These amendments do little except polish the thin veneer of legality surrounding the ongoing land grab. In fact, they intimate that a new wave of "resettlement" initiatives is waiting in the wings, with formerly exempted properties targeted. As with previous amendments to the Land Acquisition Act, these newest amendments are tailored to counter the arguments landowners have used successfully to challenge acquisitions through the courts: flawed process, offers of alternative land, pre-existing agreements under competing law, protection under EPZ or ZIC rules, approved conservancy status, or unsuitability of specific land for agricultural purposes. As the GOZ rushes to legislate

legitimacy for its poorly planned acquisitions, there is little hope that any of these arguments will now provide any relief in the courts.

14. (C) Despite recent press reports about Minister of Information Jonathan Moyo's desire for a "legal instrument that makes those title deeds a little lower than toilet paper, forever a nullity that invites ridicule in any decent court of law," (Herald, October 25, 2003), the GOZ has apparently not been able to figure out a method for addressing the issue of title. On the one hand, the GOZ cannot abolish title to all agricultural land without harming Zimbabwe's indigenous farmers. On the other hand, the GOZ cannot abolish title only to white-owned land without puncturing its contention that the land acquisition program is about colonialism rather than politics and race. It cannot abolish title deeds for all lands purchased before independence without acknowledging that most agricultural land was purchased (often with GOZ acquiescence) after 1980 -- scuttling its arguments about rectifying colonial imbalances. The GOZ could attempt to invalidate title only for "non-Zimbabweans," but it has already faced numerous challenges to laws designed to disenfranchise third- and fourth-generation residents (and voters) ahead of the 2002 presidential elections.

15. (C) While the GOZ may be comfortable with leaving its small-scale A1 farmers with possession only and no pretense to title, it cannot ignore the issue forever with its large-scale A2 commercial farmers. At this point, "new farmers" occupy even the largest farms without any sort of bankable title. Absent independent wealth, commercial agriculture requires capital -- and capital requires collateral. The GOZ, following its own precedent in creating "bearer's cheques" rather than printing more bank notes, could theoretically print a title-deed-like document rather than invalidate existing title deeds. Indeed, the GOZ has floated publicly the idea of issuing 49 or 99 year leases for such land, "which banks should accept as collateral." However, it is unlikely that many mainstream banks would accept such instruments as security for agricultural loans -- particularly with competing claims of ownership, and the inevitability of legal conflict should a bank wish to foreclose. If capital is indeed a coward, then Zimbabwean agriculture will remain a frightening investment destination until such anomalies are resolved.

16. (C) Except for removing the legal protections that have theoretically, but not in practice, fenced off conservancies, export zones, and other categories of land, the timing of the law makes little sense. The vast majority of commercial farmland is already de facto in the hands of new possessors (as opposed to titled owners), making the amended law something of a moot point.

SULLIVAN